



After reviewing the record, the arguments and the briefs of the parties, the Appeals Board finds for purposes of preliminary hearing that the Application for Review filed by respondent and its insurance carrier should be dismissed. This is an interlocutory appeal from a preliminary order which was within the jurisdiction of the Administrative Law Judge to enter. This appeal does not give rise to an issue considered jurisdictional and subject to review by the Board pursuant to K.S.A. 44-534a(a)(2).

A preliminary hearing was held on September 28, 1995 before the Administrative Law Judge. The testimony of claimant was presented and several exhibits were introduced including a copy of an Award in Docket Number 168,143 and a copy of the transcript of settlement hearing in Docket Number 157,708. Both of these exhibits represented prior claims by Sherry Moses for work-related injuries to her bilateral upper extremities. The central issue before the Administrative Law Judge at the Preliminary Hearing of September 28, 1995 was whether claimant's current complaints to her bilateral upper extremities were the result of a new work-related accident or, instead, the natural and probable consequence of her prior injuries. At the conclusion of the hearing, the Administrative Law Judge issued an Order for an independent medical examination pursuant to K.S.A. 44-516. Judge Foerschler's Preliminary Decision includes the following statement:

"[I]t is apparent that there is a dispute as to the injury, and that a neutral physician should be appointed to determine whether the complaints developed by Mrs. Moses in June, 1995, represented a new injury to her hands and wrists or should be considered as additional complications from the prior injuries for which she was compensated in prior proceedings."

Judge Foerschler did not order preliminary benefits of either temporary total disability compensation or medical treatment to be provided at the expense of the employer. Instead, he ordered an IME designed to address the central issue of the compensability of the claim. This was an interlocutory order by the Administrative Law Judge. In effect, the preliminary hearing was continued until such time as an independent medical examination could be conducted by a neutral health care provider who would then give an opinion concerning the disputed issue of whether the claimant sustained a new injury. As we have stated, the Administrative Law Judge did not find this to be a compensable claim, rather he deferred making a preliminary ruling on that issue until after additional information was obtained, specifically the ordered IME.

Respondent and insurance carrier raise four (4) specific issues in their appeal. They can be answered as follows:

- (1) Whether the Administrative Law Judge exceeded his jurisdiction in granting the relief requested by the claimant at the preliminary hearing? The Administrative Law Judge did not grant the relief requested by the claimant. The claimant was seeking temporary total disability compensation and medical treatment; neither were ordered. The Administrative Law Judge did order an IME pursuant to K.S.A. 44-516 and did not exceed his jurisdiction in doing so.
- (2) Whether the Administrative Law Judge exceeded his jurisdiction in finding that the claimant suffered an accidental injury? To the contrary, the Administrative Law Judge ordered an IME "to determine whether the complaints developed by Mrs. Moses in June, 1995, represented a new

injury to her hands and wrists or should be considered as additional complications from prior proceedings.”

- (3) Whether the Administrative Law Judge exceeded his jurisdiction in finding the claimant's alleged injury arose out of and in the course claimant's employment? Again, the Administrative Law Judge did not make a finding that claimant's alleged injury arose out of and in the course of claimant's employment. His ordering of an independent medical examination pursuant to K.S.A. 44-516 did not constitute a finding concerning the compensability of the claim. That is made clear by the express language of the order.
- (4) Whether the Administrative Law Judge exceeded his jurisdiction in finding that the claimant gave timely notice to the respondent of the alleged injury? The question of whether claimant gave timely notice is not mentioned in the Administrative Law Judge's order. It cannot be assumed from the order that the Administrative Law Judge made a preliminary finding that the claimant gave timely notice to the respondent because the preliminary decision does not find the claim compensable for purposes of preliminary hearing or otherwise.

The September 28, 1995 Preliminary Decision is an interlocutory order. It is not a preliminary finding pursuant to K.S.A. 44-534a that the alleged injury to the employee is compensable. The Administrative Law Judge did not make a preliminary award of medical compensation and/or temporary total disability compensation. Respondent and insurance carrier's Application for Review is premature. The Appeals Board does not have jurisdiction to review the subject order and this appeal should, therefore, be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Application for Review filed by respondent and insurance carrier should be, and is hereby, dismissed and the September 28, 1995 Preliminary Decision of Administrative Law Judge Robert H. Foerschler remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: David R. Hills, Lenexa, Kansas  
Gary R. Terrill, Overland Park, Kansas  
Robert H. Foerschler, Administrative Law Judge

**SHERRY MOSES**

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**DOCKET NO. 204,228**

Philip S. Harness, Director